IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.57 of 2003 (M/B)

Raj Kumar Pandhi
S/o Late Shri Heera Lal Pandhi,
R/o 76/2, Nehru Nagar, Roorkee,
District Haridwar …… Petitioner.

Versus

1. State of Uttaranchal
Through Collector Hardwar,

2. Assistant Labour Commissioner,
Hardwar.

3. Assistant Sub Divisional Magistrate,
Roorkee, District Hardwar.

…… Respondents

Mr. Arivind Vashisth, Advocate for the petitioner.
Mr. J.P. Joshi, Addl. Chief Standing Counsel for the respondents.

JUDGMET

Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Arvind Vashisth, Advocate for the petitioner.

Mr. J.P. Joshi, Addl. Chief Standing Counsel for the respondents.

They are heard.

2.) The petitioner, Proprietor of Ram Brick Kiln, has filed this writ petition for the following reliefs:

> "i) a writ order or direction in the nature of certiorari quashing the order dated 19.12.2002 passed by Assistant Labour Commissioner.
>
> ii) a writ, order or direction in the nature of mandamus commanding the Assistant Labour Commissioner to decide the case afresh after determination of the Age of alleged child labours.
>
> iii) a writ, order or direction in the nature of mandamus commanding the respondents not to proceed with the recovery of the compensation as ordered by Assistant Labour Commissioner on 19.12.2002.

iv) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

v) Award cost of the petition."

3) The petitioner is aggrieved of the impugned order dated 19.12.2002 (Annexure No. 6), whereby the Assistant Labour Commissioner, Dewpura, Hardwar following the directions contained in the judgment of the Apex court in the case of M.C. Mehta Vs. State of Tamil Nadu, reported in A.I.R. 1997 S.C. 699, directed the petitioner to pay compensation of Rs. 20,000/-.

4) The matter relates to the employment of child labour by the petitioner in his brick kiln in violation of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986.

5) On an inspection by Additional Sub Divisional Magistrate, Roorkee at 6:00 A.M. on 27th of April, 2002, two child labours were found working in the petitioner's brick kiln. A notice was issued to the petitioner to show cause as to why he should not be directed to pay compensation of Rs. 20,000/- following the Apex court's directions in the case M.C. Mehta.

6) The petitioner in this reply to the show cause notice challenged the jurisdiction of the Additional Sub Divisional Magistrate to inspect the petitioner's brick kiln.

7) The Assistant Labour Commissioner did not find any substance in the petitioner's objection and passed the impugned order.

8) The learned counsel for the petitioner challenged the impugned order on the following grounds:

i) that Additional Sub Divisional Magistrate was not authorized under Section 17 of the Act to inspect the petitioner's brick kiln;

ii) that the petitioner cannot be directed to pay compensation without his trial and conviction under provisions of the Act;

iii) that, infect, no was found in brick kiln;

iv) that the inspection by Additional Sub Divisional Magistrate at 6:00 A.M. was not during the working hours of the kiln.

9) The State Government by its Order No. 1622/ Udyogic Vikas dated 23.07.2001 has declared all the Sub Divisional Magistrate as Inspectors under Section 17 of the Act. As the Notification authorizes all “Sub Divisional Magistrates”, we have no manner of doubt that all “Sub Divisional Magistrates”, would include “Additional Sub Divisional Magistrates” also. We, therefore, do not find any substance in the petitioner’s objection that the above Government Order authorizes only the Sub Divisional Magistrates and not the Additional Sub Divisional Magistrates. The Assistant Labour Commissioner, therefore, has rightly rejected the petitioner’s objection in that behalf.

10) As the direction to the petitioner to pay compensation is based on the directions issued by the Apex court in case of M.C. Mehta, the petitioner’s submission that in the absence of petitioner’s trial and conviction under the Act he cannot he directed to pay compensation, deserves outright rejection as the direction to the employer to pay compensation following the decision of the Apex court in the case of M.C. Metha is in addition to the employer’s liability under the Act. The petitioner’s submission in that behalf is liable to be rejected and is hereby rejected.

11) So far as the petitioner’s denial to the presence of the child labour at the brick kiln at the relevant time is concerned, we do not find any material to take a different view than the one taken by the Assistant Labour Commissioner, which was based on the material available including the inquiry report of the Additional Sub Divisional Magistrate. From the impugned order, we gather that the process at the brick kiln used

to commence at 6:00 A.M. Therefore, we do not find anything wrong in the inspection by the Additional Sub Divisional Magistrate at 6:00 A.M.

12) For the foregoing reasons, we do not find any substance in any of the submissions advanced on behalf of the petitioner. The petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

13) Consequently, the interim order dated 17.02.2003 stands vacated automatically.

(Prafulla C. Pant, J.) 02.05.2006

(Rajeev Gupta, C.J.) 02.05.2006

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